

**IN THE DISTRICT COURT IN AND FOR TULSA COUNTY, OKLAHOMA**

BRIAN K ROGERS, Plaintiff, v. DONALD C YONCE, Defendant, and SOLARWINDS NET INC, Defendant.	No. CJ-2007-7863 (Civil relief more than \$10,000: <b>BREACH OF CONTRACT/QUASI CONTRACT</b> )  Filed: 11/26/2007  Judge: Shallcross, Deborah C.
---	---

**Parties**

ROGERS, BRIAN K , Plaintiff  
SOLARWINDS NET INC , Defendant  
YONCE, DONALD C , Defendant

**Attorneys**

**Attorney**

Burkhardt, John A.(Bar # 1336)  
500 ONEOK PLAZA  
100 W 5TH ST  
TULSA, OK 74103

Hilscher, Gerald(Bar # 4218)  
100 W. 5TH  
SUITE 500  
TULSA, OK 74103

**Represented Parties**

ROGERS, BRIAN K

ROGERS, BRIAN K

**Events**

Event	Party	Docket	Reporter
-------	-------	--------	----------

**Issues**

For cases filed before 1/1/2000, ancillary issues may not appear except in the docket.

**Issue # 1.**

Issue: BREACH OF CONTRACT/QUASI CONTRACT (CONTRACT)

Filed by: ROGERS, BRIAN K

Filed Date: 11/26/2007

**Party Name:**

**Disposition Information:**

**Defendant:** YONCE, DONALD  
C Pending.

**Defendant:** SOLARWINDS  
NET INC Pending.

**Issue # 2.**

Issue: VIOLATION OF OKLA LABOR PROTECTION LAWS (OTHER)

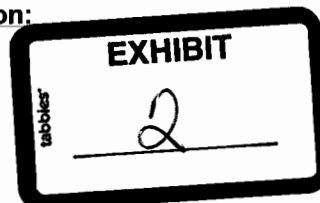
Filed by: ROGERS, BRIAN K

Filed Date: 11/26/2007

**Party Name:**

**Disposition Information:**

**Defendant:** YONCE, DONALD  
C Pending.



**Defendant:** SOLARWINDS Pending.  
NET INC

**Issue # 3.** Issue: PROMISSORY & EQUITABLE ESTOPPEL (OTHER)  
Filed by: ROGERS, BRIAN K  
Filed Date: 11/26/2007

**Party Name:** **Disposition Information:**

**Defendant:** YONCE, DONALD Pending.  
C

**Defendant:** SOLARWINDS Pending.  
NET INC

**Issue # 4.** Issue: BREACH OF COVENANT OF GOOD FAITH & FAIR  
DEALING (OTHER)  
Filed by: ROGERS, BRIAN K  
Filed Date: 11/26/2007

**Party Name:** **Disposition Information:**

**Defendant:** YONCE, DONALD Pending.  
C

**Defendant:** SOLARWINDS Pending.  
NET INC

**Issue # 5.** Issue: FRAUD & CONSTRUCTIVE FRAUD (FRAUD)  
Filed by: ROGERS, BRIAN K  
Filed Date: 11/26/2007

**Party Name:** **Disposition Information:**

**Defendant:** YONCE, DONALD Pending.  
C

**Defendant:** SOLARWINDS Pending.  
NET INC

**Issue # 6.** Issue: CONSTRUCTIVE TRUST/EQUITABLE LIEN (OTHER)  
Filed by: ROGERS, BRIAN K  
Filed Date: 11/26/2007

**Party Name:** **Disposition Information:**

**Defendant:** YONCE, DONALD Pending.  
C

**Defendant:** SOLARWINDS Pending.  
NET INC

**Issue # 7.** Issue: UNJUST ENRICHMENT & ACCOUNTING (OTHER)  
Filed by: ROGERS, BRIAN K  
Filed Date: 11/26/2007

**Party Name:** **Disposition Information:**

**Defendant:** YONCE, DONALD Pending.  
C

**Defendant:** SOLARWINDS Pending.  
NET INC

**Issue # 8.** Issue: BREACH OF FIDUCIARY DUTIES & KNOWINGLY  
ASSISTING BREACH (DUTY)

Filed by: ROGERS, BRIAN K  
 Filed Date: 11/26/2007

**Party Name:**

**Disposition Information:**

**Defendant:** YONCE, DONALD  
 Pending.  
 C

**Defendant:** SOLARWINDS  
 Pending.  
 NET INC

**Issue # 9.**


Issue: CONSTRUCTIVE TRUST/EQUITABLE LIEN (OTHER)  
 Filed by: ROGERS, BRIAN K  
 Filed Date: 11/26/2007



**Party Name:**

**Disposition Information:**


**Defendant:** SOLARWINDS  
 Pending.  
 NET INC

**Docket**

Date	Code	Count	Party	Serial #	Entry Date	User Name		
11-26-2007	TEXT	1		65434989	Nov 26 2007 11:44:22:477AM	OSCN\DimitaFarmer	-	\$ 0.00
CIVIL RELIEF MORE THAN \$10,000 INITIAL FILING.								
11-26-2007	CONTRACT	-		65434991	Nov 26 2007 11:44:22:507AM	OSCN\DimitaFarmer	Realized	\$ 0.00
BREACH OF AGREEMENT - CONTRACT								
11-26-2007	DMFE	-		65434992	Nov 26 2007 11:44:22:507AM	SYSTEM\Autodocket	Realized	\$ 2.00
DISPUTE MEDIATION FEE(\$ 2.00)								
11-26-2007	PFE1	-		65434993	Nov 26 2007 1:45:11:320PM	OSCN\CarolynCarter	Realized	\$ 150.00
PETITION(\$ 150.00)								
 Document Available at Court Clerk's Office (#1005999308)								
11-26-2007	PFE7	-		65434994	Nov 26 2007 11:44:22:507AM	SYSTEM\Autodocket	Realized	\$ 6.00
LAW LIBRARY FEE(\$ 6.00)								
11-26-2007	OCISR	-		65434995	Nov 26 2007 11:44:22:507AM	SYSTEM\Autodocket	Realized	\$ 25.00
OKLAHOMA COURT INFORMATION SYSTEM REVOLVING FUND(\$ 25.00)								
11-26-2007	CCADMIN	-		65434996	Nov 26 2007 11:44:22:507AM	SYSTEM\Autodocket	Realized	\$ 1.00
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 1.00)								
11-26-2007	CHAB	-		65434997	Nov 26 2007 11:44:22:507AM	SYSTEM\Autodocket	Realized	\$ 10.00
C.H.A.B. STATUTORY FEE(\$ 10.00)								
11-26-2007	AGVSU	-		65434998	Nov 26 2007 11:44:22:507AM	SYSTEM\Autodocket	Realized	\$ 3.00
ATTORNEY GENERAL VICTIM SERVICES UNIT(\$ 3.00)								

11-26-2007	CCADMIN03	-	65434999	Nov 26 2007 11:44:22:507AM	SYSTEM\Autodocket	Realized	\$ 0.30
COURT CLERK ADMINISTRATIVE FEE ON COLLECTIONS(\$ 0.30)							
11-26-2007	LTF	-	65435000	Nov 26 2007 11:44:22:547AM	OSCN\DimitaFarmer	Realized	\$ 10.00
LENGTHY TRIAL FUND(\$ 10.00)							
11-26-2007	SMF	-	65435001	Nov 26 2007 11:44:50:660AM	OSCN\DimitaFarmer	Realized	\$ 10.00
SUMMONS FEE (CLERKS FEE)-2(\$ 10.00)							
11-26-2007	SMIP	-	65435002	Nov 26 2007 11:44:55:640AM	OSCN\DimitaFarmer	Realized	\$ 0.00
SUMMONS ISSUED - PRIVATE PROCESS SERVER-2							
11-26-2007	TEXT	-	65434990	Nov 26 2007 11:44:22:487AM	OSCN\DimitaFarmer	-	\$ 0.00
OCIS HAS AUTOMATICALLY ASSIGNED JUDGE SHALLCROSS, DEBORAH C. TO THIS CASE.							
11-26-2007	ACCOUNT	-	65435023	Nov 26 2007 11:45:15:710AM	OSCN\DimitaFarmer	-	\$ 0.00
RECEIPT # 2007-1362485 ON 11/26/2007. PAYOR: BOONE SMITH DAVIS TOTAL AMOUNT PAID: \$ 217.30. LINE ITEMS: CJ-2007-7863: \$160.00 ON AC01 CLERK FEES. CJ-2007-7863: \$3.00 ON AC07 ATTORNEY GENERAL VICTIM SERVICES UNIT. CJ-2007-7863: \$6.00 ON AC23 LAW LIBRARY FEE. CJ-2007-7863: \$1.30 ON AC31 COURT CLERK REVOLVING FUND. CJ-2007-7863: \$2.00 ON AC64 DISPUTE MEDIATION FEES. CJ-2007-7863: \$10.00 ON AC69 CHILD ABUSE MULTIDISCIPLINARY FEE. CJ-2007-7863: \$25.00 ON AC79 OCIS REVOLVING FUND. CJ-2007-7863: \$10.00 ON AC81 LENGTHY TRIAL FUND.							
11-27-2007	S	-	YONCE, DONALD C 65456313	Nov 28 2007 10:57:08:383AM	OSCN\CheriBeck	-	\$ 0.00
PARTY HAS BEEN SUCCESSFULLY SERVED. SUMMONS SERVED ON DONALD C. YONCE, PERSONAL SERVICE, ON 11-26-07 BY PROCESS SERVER  Document Available at Court Clerk's Office (#1006007084)							
11-27-2007	APLI	-	ROGERS, BRIAN K 65462117	Nov 28 2007 9:35:36:097AM	OSCN\PatriciaLawson	-	\$ 0.00
PLAINTIFF'S APPLICATION FOR LEAVE TO ISSUE SUBPOENA FOR PRODUCTION FO DOCUMENTS, // CERTIFICATE OF SERVICE  Document Available at Court Clerk's Office (#1006005134)							
11-30-2007	CTFREE	-	65496303	Nov 30 2007 3:20:22:503PM	OSCN\BettySteward	-	\$ 0.00
SHALLCROSS, DEBORAH; GRANTED/ORDER; PLAINTIFF GRANTED LEAVE TO ISSUE SUBPOENA FOR PRODUCTION OF DOCUMENTS;							
11-30-2007	O	-	65498595	Dec 3 2007 8:47:21:837AM	OSCN\PatriciaLawson	-	\$ 0.00
ORDER // ( SEE ENTRY ABOVE)  Document Available at Court Clerk's Office (#1006100927)							
12-03-2007	S	-	SOLARWINDS NET INC 65511378	Dec 4 2007 8:43:58:817AM	OSCN\CarolynCarter	-	\$ 0.00

PARTY HAS BEEN SUCCESSFULLY SERVED. SUMMONS SERVED ON SOLARWINDS NET LLC, C/O THE CORPORATION COMPANY, SIGNED BY STEPHANIE ? ON 11-29-07 BY CERTIFIED MAIL

 Document Available at Court Clerk's Office (#1006101619)

12-03-2007 O - 65511407 Dec 4 2007 8:45:07:180AM OSCN\CarolynCarter - \$ 0.00

ORDER (PLTF GRANTED LEAVE TO ISSUE SUBPOENA) / CERTIFICATE OF SERVICE

 Document Available at Court Clerk's Office (#1006101615)

## Balances

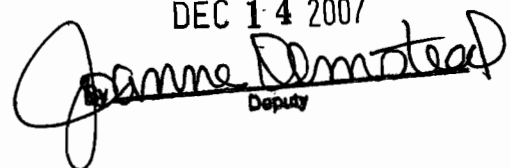
Party	Costs Due	Costs Paid	Balance Due	Cash Bonds	Bond Forf.	Overpayments	Holding
YONCE, DONALD C	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
ROGERS, BRIAN K	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
SOLARWINDS NET INC	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Generic Party	\$ 217.30	\$ 217.30	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Totals	\$ 217.30	\$ 217.30	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

Report Generated by The Oklahoma Court Information System at December 14, 2007 15:53 PM

End of Transmission.

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerk's Office of Tulsa County, Oklahoma, this

DEC 14 2007

  
Deputy





**FILED**

DEC 03 2007

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLA.

**BRIAN K. ROGERS,**

**Plaintiff,**

**v.**

**DONALD C. YONCE, and  
SOLARWINDS.NET, INC.,  
an Oklahoma corporation,**

**Defendants.**

2007 DEC -3 PM 4:00

SALLY HOWE SMITH  
COURT CLERK

Case No. CJ-2007-07863

(Judge Deborah C. Shallcross)

**DISTRICT COURT  
FILED**

NOV 30 2007

**ORDER**

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

There comes before the Court Plaintiff's Application For Leave To Issue Subpoena For Production of Documents to David A. Yonce, and the Court, for good cause shown, hereby grants said Application.

IT IS THEREFORE ORDERED, that Plaintiff Ryan K. Rogers is hereby granted leave to issue the Subpoena For Production of Documents (a copy of which was attached to Plaintiff's Application as Exhibit "1") to David A. Yonce.

DATED this 30 day of Nov., 2007.

**DEBORAH C. SHALLCROSS**

**DISTRICT JUDGE**

Presented by:

Gerald L. Hilsher, OBA #4218  
John A. Burkhardt, OBA #1336  
Boone, Smith, Davis, Hurst & Dickman  
500 ONEOK Plaza, 100 West 5<sup>th</sup> Street  
Tulsa, OK 74103  
(918) 587-0000 (ph)  
(918) 599-9317 (fax)

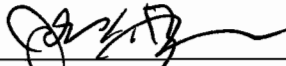
Attorneys for Plaintiff, Brian K. Rogers

**CERTIFICATE OF SERVICE**

I hereby certify that on the 3rd day of December, 2007, I mailed a true and correct copy of the foregoing **Order** re: Plaintiff's Application For Leave For Issuance of Subpoena For Production of Documents, with proper postage thereon fully prepaid, to:

Donald C. Yonce  
6206 E. 105th Street  
Tulsa, OK 74137-7096

SolarWinds.Net, Inc.  
c/o The Corporation Company (Registered Service Agent)  
120 N. Robinson, Suite 735  
Oklahoma City, OK 73102

  
\_\_\_\_\_  
John A. Burkhardt

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma,  
hereby certify that the foregoing is a true, correct and full  
copy of the instrument herewith set out as appears on record  
in the Court Clerk's Office of Tulsa County, Oklahoma, this

DEC 14 2007

  
\_\_\_\_\_  
Deputy



IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

BRIAN K. ROGERS,

Plaintiff,

v.

DONALD C. YONCE, and  
SOLARWINDS.NET, INC.,  
an Oklahoma corporation,

Defendants.

2007 DEC -3 PM 4:30

CJ 2007 07863

SALLY HOWE SMITH  
COURT CLERK

DISTRICT COURT  
**FILED**

DEC 03 2007

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY

**SUMMONS**

To the Defendant: SolarWinds.Net, Inc.  
c/o The Corporation Company, Registered Agent  
120 N. Robinson, Suite 735  
Oklahoma City, OK 73102

You have been sued by the above-named Plaintiff, and you are directed to file a written answer to the attached Petition at the above address within twenty (20) days after service of this Summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorneys for the Plaintiffs. Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 24 day of Nov, 2007.

SALLY HOWE SMITH, Court Clerk

(SEAL)

By: [Signature]  
Deputy

This Summons and Petition were served on this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Attorneys for Plaintiff, Brian K. Rogers  
Gerald L. Hilsher, OBA #4218  
John A. Burkhardt, OBA #1336  
Boone, Smith, Davis, Hurst & Dickman  
500 ONEOK Plaza, 100 West 5<sup>th</sup> Street  
Tulsa, OK 74103  
(918) 587-0000

YOU MAY SEEK THE ADVICE OF ANY ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS



**RETURN OF SERVICE BY PROFESSIONAL PROCESS SERVER**

STY F.

CASE NUMBER: CJ 2007 07863

REQUEST FOR SERVICE RECEIVED FROM: \_\_\_\_\_

I, being duly sworn, certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, I received the foregoing:

Summons w/Petition or Complaint  
Temporary Restraining Order  
Garnishment  
Subpoena w/check for Witness fees  
Affidavit/order  
Notice/motion: \_\_\_\_\_  
Citation/hearing on assets  
Forcible entry/detainer  
Other: \_\_\_\_\_

and served the same according to law in the following manner.

**Personal Service**

1. by delivering a true copy of said process personally to \_\_\_\_\_ at \_\_\_\_\_  
Date: \_\_\_\_\_  
by delivering a true copy of said process personally to \_\_\_\_\_ at \_\_\_\_\_  
Date: \_\_\_\_\_

**Usual Place of Residence**

2. by leaving a copy of said process for \_\_\_\_\_ at \_\_\_\_\_  
which is his/her usual place of residence with \_\_\_\_\_, a resident/family  
member, fifteen years of age or older, on \_\_\_\_\_  
by leaving a copy of said process for \_\_\_\_\_ at \_\_\_\_\_  
which is his/her usual place of residence with \_\_\_\_\_, a resident/family  
member, fifteen years of age or older, on \_\_\_\_\_

**Corporation/Partnership, etc.**

3. by delivering a true copy of said process to \_\_\_\_\_ at \_\_\_\_\_  
he/she/it, being the service agent, agent in charge, an officer, or partner of said corporation or entity (such as  
a City, County agency, etc.) on \_\_\_\_\_

**Posted Service**

4. by affixing a true copy of said process to the premises located at \_\_\_\_\_ which is  
in the possession of the defendant, to wit: \_\_\_\_\_ on \_\_\_\_\_

**Service by Mail**

5. by mailing a true copy of said process to SolarWinds.Net, LLC at c/o The Corporation Company - 120 N. Robinson, Suite 735, Oklahoma City, OK 73102 on November 26, 2007 by certified mail, restricted delivery, return receipt requested. (See Attached).

**Not Found**

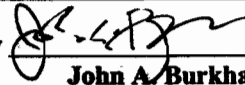
6. I certify that the said process on the following named WAS NOT SERVED for reasons stated: \_\_\_\_\_  
\_\_\_\_\_

**Other Information**

Said service of process made pursuant to  
Oklahoma State Law,  
Federal Law, to wit: \_\_\_\_\_

Notes

By

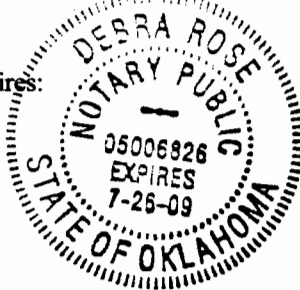


John A. Burkhardt

Subscribed and sworn to before me this 3rd day of December, 2007.

My Commission Expires:

(SEAL)





Notary Public

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)  
 For delivery information visit our website at www.usps.com

**OFFICIAL USE**

5399-1 (FAB) Postage \$ 1.87

Certified Fee 2.65

Return Receipt Fee (Endorsement Required) 2.15

Restricted Delivery Fee (Endorsement Required) 4.10

Total Postage & Fees \$10.72

Sent To SolarWinds.Net, LLC  
c/o The Corporation Company  
 Street, Apt. No., or PO Box No. 120 N Robinson, #735  
 City, State, ZIP+4 Oklahoma City, OK 73102

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <u>[Signature]</u> Agent <input type="checkbox"/> Addressee <input type="checkbox"/></p> <p>B. Received by (Printed Name) _____ C. Date of Delivery _____</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes          If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>SolarWinds.Net, LLC          c/o The Corporation Company          120 N. Robinson, Suite 735          Oklahoma, OK 73102</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p>
<p>2. Article Number _____          (Transfer from se _____)</p>	

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerk's Office of Tulsa County, Oklahoma, this

DEC 14 2007

By

Deputy

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA



2007 NOV 30 PM 4:38

BRIAN K. ROGERS,

Plaintiff,

v.

DONALD C. YONCE, and  
SOLARWINDS.NET, INC.,  
an Oklahoma corporation,

Defendants.

SALLY HOWE SMITH  
COURT CLERK

Case No. CJ-2007-07863  
(Judge Deborah C. Shallcross)

DISTRICT COURT  
**FILED**

NOV 30 2007


SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA: TULSA COUNTY

**ORDER**

There comes before the Court Plaintiff's Application For Leave To Issue Subpoena For Production of Documents to David A. Yonce, and the Court, for good cause shown, hereby grants said Application.

IT IS THEREFORE ORDERED, that Plaintiff Ryan K. Rogers is hereby granted leave to issue the Subpoena For Production of Documents (a copy of which was attached to Plaintiff's Application as Exhibit "1") to David A. Yonce.

DATED this 30 day of Nov, 2007.

  
DISTRICT JUDGE

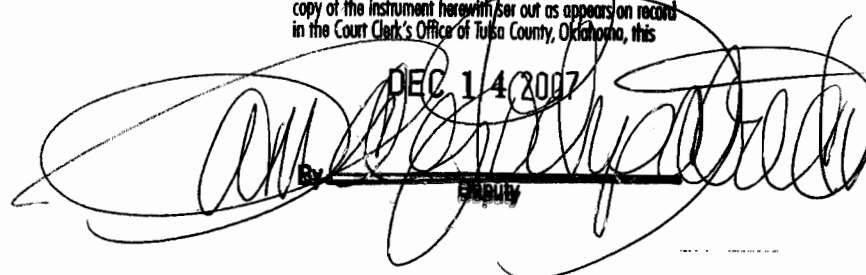
Presented by:

Gerald L. Hilsher, OBA #4218  
John A. Burkhardt, OBA #1336  
Boone, Smith, Davis, Hurst & Dickman  
500 ONEOK Plaza, 100 West 5<sup>th</sup> Street  
Tulsa, OK 74103  
(918) 587-0000 (ph)  
(918) 599-9317 (fax)

Attorneys for Plaintiff, Brian K. Rogers

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma,  
herby certify that the foregoing is a true, correct and full  
copy of the instrument herewith set out as appears on record  
in the Court Clerk's Office of Tulsa County, Oklahoma, this

DEC 14 2007





**IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA**

**BRIAN K. ROGERS,** 2007 NOV 27 PM 3:09

**Plaintiff,** SALLY HOWE SMITH  
COURT CLERK )

v. )

**DONALD C. YONCE, and  
SOLARWINDS.NET, INC.,  
an Oklahoma corporation,**

**Defendants.**

Case No. CJ-2007-07863

(Judge Deborah C. Shalloo)

**DISTRICT COURT  
FILED**

NOV 27 2007

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA, TULSA COUNTY

**PLAINTIFF'S APPLICATION FOR LEAVE TO  
ISSUE SUBPOENA FOR PRODUCTION OF DOCUMENTS**


Plaintiff Brian K. Rogers ("Rogers"), by and through his undersigned counsel of record, hereby applies for leave to issue a subpoena for the production of documents pursuant to 12 Okla. Stat. §2004.1A.5 to David A. Yonce (a copy of which is attached hereto as Exhibit "1"). In support of this Application For Leave, Plaintiff states as follows:

1. The above-named person is, or recently has been, closely associated with Defendant Solarwinds.Net because he is a current or former employee, officer, or part-owner of Defendant SolarWinds.Net, Inc. during some portion of the period of time covered by the allegations in Plaintiff's Petition. Accordingly, it is expected that David A. Yonce is likely to have custody, possession, control, or access to records or documents that would be relevant to the claims asserted by Plaintiff Rogers in the instant case.

2. The document subpoena will allow the subpoenaed person at least forty-five (45) days in which to produce the requested records. Consequently, both Defendants, Donald C. Yonce and SolarWinds.Net Inc. (who are expected to be served promptly following the filing of the Petition), will have adequate opportunity to be heard, if they should so choose, prior to the due date for the document production pursuant to the document subpoena.

WHEREFORE, Plaintiff Rogers respectfully requests that he be granted leave to issue the document subpoena, a copy of which is attached hereto as Exhibit "1".

Respectfully submitted,



---

Gerald L. Hilsher, (OBA #4218)  
John A. Burkhardt, (OBA #1336)  
BOONE, SMITH, DAVIS, HURST & DICKMAN  
500 ONEOK Plaza  
100 West 5th Street  
Tulsa, OK 74103-4288  
Telephone (918) 587-0000  
Facsimile (918) 599-9317

Attorney for Plaintiff Brian K. Rogers

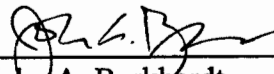


**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of November, 2007, I mailed a true and correct copy of the foregoing Plaintiff's Application For Leave For Issuance of Subpoena For Production of Documents, with proper postage thereon fully prepaid, to:

Donald C. Yonce  
6206 E. 105th Street  
Tulsa, OK 74137-7096

SolarWinds.Net, Inc.  
c/o The Corporation Company (Registered Service Agent)  
120 N. Robinson, Suite 735  
Oklahoma City, OK 73102

  
\_\_\_\_\_  
John A. Burkhardt

**IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA**

**BRIAN K. ROGERS,**

**Plaintiff,**

**v.**

**DONALD C. YONCE, and  
SOLARWINDS.NET, INC.,  
an Oklahoma corporation,**

**Defendants.**

Case No. \_\_\_\_\_

**SUBPOENA DUCES TECUM**

**TO: DAVID A. YONCE**  
13339 E. 137th Street  
Broken Arrow, OK 74011-7434

**GREETINGS:**

In connection with the above-captioned lawsuit, you are hereby commanded to make available at the offices of Boone, Smith, Davis, Hurst & Dickman, 100 West Fifth St., Suite 500, Tulsa, Oklahoma, on January 18, 2008, at 10:00 a.m., all documents and records described on Exhibit "A" attached hereto for inspection and copying by Plaintiff. Hereof fail not under penalty of law.

In witness whereof, I have hereunto set my hand as an attorney authorized to practice law in the State of Oklahoma this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Gerald L. Hilsher, OBA #4218  
John A. Burkhardt, OBA #1336  
BOONE, SMITH, DAVIS, HURST & DICKMAN  
500 Oneok Plaza, 100 West Fifth Street  
Tulsa, Oklahoma 74103  
(918) 587-0000 (ph)  
(918) 599-9317 (fax)

Attorneys for Plaintiff Brian K. Rogers

**EXHIBIT "1"**

**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the \_\_\_\_\_ of \_\_\_\_\_, 2007, a true and correct copy of the above and foregoing instrument was mailed by certified mail, restricted delivery, return receipt requested, with proper postage thereon prepaid to:

DAVID A. YONCE  
13339 E. 137th Street  
Broken Arrow, OK 74011-7434

---

John A. Burkhardt

**EXHIBIT "A"**

**A. Definitions and Instructions**

1. As used in this request, the terms "record(s)" or "document(s)" has the same meaning as in 12 Okla. Stat. §3234A, and also include but are not limited to all written, typed, printed, recorded, drawn or diagrammed, graphic or photographic material, and audio or video reproduction tapes, or other devices, however produced or reproduced, including: agreements, communications, books, records, invoices, ledgers, journals, accounts, memoranda, stenographic or handwritten notes, letters, e-mail, notices, telegrams, transcripts, diaries, calendars, contracts, opinions, studies, publications, analyses, summaries, messages, correspondence, reports, surveys, statistical compilations, records of telephone conversations, records of personal conversations or interviews, records of meetings or conferences, graphs, notebooks, plans, drawings, sketches, maps, reports of investigations or negotiations, photographs, tapes, motion picture film, videotapes, brochures, pamphlets, advertisements, circulars, data processing cards, computer tapes or printouts, press releases, drafts, work papers, any marginal comments appearing on any writing or copy thereof, and all other writings and recordings of any kind, whether kept or stored in paper, tape, disk, electronic, or other type of format.

2. As used in this request, the term "persons" means any individual, firm, proprietorship, corporation, association, or any other type of organization or entity.

3. As used in this request, the terms "you" or "your" mean David A. Yonce, his spouse, and/or all partners, managers, officers, employees, directors, agents or representatives, and all other persons acting or whom you believe to have acted on behalf of David A. Yonce.

4. As used in this request, a document "relating to" or "concerning" a given subject means any document constituting or comprising that subject, and any document identifying, referring to, dealing with, commenting upon, describing, summarizing, analyzing, explaining, detailing, outlining, defining, interpreting or pertaining to that subject.

5. As used in this request, "communication" means any oral statement, dialogue, colloquy, discussion or conversation, and also means any transfer of thoughts or ideas between persons by means of documents, and includes any transfer of data from one location to another by electronic or similar means.

6. Unless otherwise set forth in a specific document request, the documents requested include all documents created within the time period September 1, 2001, through the date of your production of documents and records responsive to these requests.

7. The documents requested shall be produced pursuant to 12 Okla. Stat. §2004.1.D.1, i.e., as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories in the request.

8. Your response shall state, with respect to each item or category, that inspection and related activities shall be permitted as requested, unless the request is objected to, in which

event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

9. This request is intended to be deemed continuing in character, so as to request you to properly amend or supplement your response if you obtain further material information.

10. If any document is withheld for any reason, including but not limited to any alleged claim of privilege, confidentiality or trade secret, or for any other reason or objection, please provide a description of the document being withheld which includes the following:

- (a) The date of the document;
- (b) The author of the document;
- (c) The recipient of the document;
- (d) All persons to whom copies of the document have been furnished;
- (e) The subject matter of the document;
- (f) The file in which the document is kept in the normal course of business;
- (g) The current custodian of the document; and
- (h) The nature of the privilege or other reason for not producing the document and sufficient description of the facts surrounding the contents of the document to justify withholding the document under said privilege or reason.

11. If any document responsive to this request was, but is no longer in your possession, custody or control, or in existence, state whether it (1) is missing or lost; (2) has been destroyed; (3) has been transferred voluntarily or involuntarily to others; or (4) has been otherwise disposed of, and in each instance explain the circumstances surrounding the authorization of such disposition and state the date or approximate date thereof.

#### **B. Requested Documents**

Pursuant to the Definitions and Instructions set forth above, please provide the following records and documents:

- 1. All documents that pertain to Plaintiff Brian K. Rogers, or to any representations, issues, claims or controversies relating to Brian K. Rogers since January 1, 1999.
- 2. All documents that reference or relate to any issues or claims, or potential issues or claims involving any other employees (or former employees) of SolarWinds.Net arising from or relating to the transfer or sale of any part of the ownership of SolarWinds.Net since January 1, 2005.
- 3. All documents that reference or relate to the interests, actions or involvement of Donald Yonce or David Yonce with SolarWinds.Net since January 1, 1999.

4. All documents that reference or relate to any transfer or sale of any part of the ownership of SolarWinds.Net since January 1, 2005.
5. All documents that reference or relate to any aspect of the ownership of any software that SolarWinds has licensed or sold to others since January 1, 2001.

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma,  
herby certify that the foregoing is a true, correct and full  
copy of the instrument herewith set out as appears on record  
in the Court Clerk's Office of Tulsa County, Oklahoma, this

DEC 14 2007

By

Deputy



IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA



BRIAN K. ROGERS,

Plaintiff,

v.

DONALD C. YONCE, and  
SOLARWINDS.NET, INC.,  
an Oklahoma corporation,

Defendants.

)  
)  
) Case No. CJ 2007 07863  
)  
) Judge: \_\_\_\_\_  
)  
) Designated Process Server  
) Scott Malan, PS #2004-80  
)  
) By [Signature]  
) John A. Burkhardt, OBA #1336

SUMMONS

DISTRICT COURT  
**FILED**

NOV 27 2007

To the Defendant: Donald C. Yonce  
6206 E. 105th Street  
Tulsa, OK 74137-7096

SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA: TULSA COUNTY

You have been sued by the above-named Plaintiff, and you are directed to file a written answer to the attached Petition at the above address within twenty (20) days after service of this Summons upon you, exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorneys for the Plaintiffs. Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of the action.

Issued this 26 day of November, 2007.

[SEAL]

SALLY HOWE SMITH, Court Clerk

By: [Signature]  
Deputy

2007 NOV 27 AM 9:26  
SALLY HOWE SMITH  
COURT CLERK

Attorneys for Plaintiff, Brian K. Rogers:  
Gerald L. Hilsher, OBA #4218  
John A. Burkhardt, OBA #1336  
Boone, Smith, Davis, Hurst & Dickman  
500 ONEOK Plaza, 100 West 5<sup>th</sup> Street  
Tulsa, OK 74103  
(918) 587-0000

**YOU MAY SEEK THE ADVICE OF ANY ATTORNEY ON ANY MATTER CONNECTED  
WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED  
IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT  
STATED IN THE SUMMONS**

[Signature]

**AFFIDAVIT OF SERVICE**

State of OKLAHOMA

County of TULSA

District Court

Case Number: CJ-2007-07863

5399.01

Plaintiff:

**BRIAN K. ROGERS**

vs.

Defendant:

**DONALD C. YONCE and SOLARWINDS.NET, INC., an oklahoma corporation**

For:

**BOONE, SMITH, DAVIS, HURST, & DICKMAN**  
100 W 5th Street #500  
Tulsa, OK 74103

**DISTRICT COURT  
FILED**

**NOV 27 2007**

**SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA. TULSA COUNTY**

Received by Malan Investigations on the 26th day of November, 2007 at 5:54 pm to be served on **DONALD C. YONCE, 6206 E 105TH STREET, TULSA, OK 74137.**

I, **SCOTT MALAN**, being duly sworn, depose and say that on the **26th day of November, 2007 at 8:20 pm**, I:

**INDIVIDUALLY/PERSONALLY** served by delivering a true copy of the **Summons and Petition** with the date and hour of service endorsed thereon by me, to: **DONALD C. YONCE** at the address of: **6206 E 105TH STREET, TULSA, OK 74137**, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerk's Office of Tulsa County, Oklahoma, this

**DEC 14 2007**

By

Deputy

**SCOTT MALAN**  
PSS # 2004-80

**Malan Investigations**  
P.O. Box 50455  
Tulsa, OK 74150  
(918) 636-2359

Our Job Serial Number: 2007003599  
Ref: 5399.01

Subscribed and Sworn to before me on the 26th day of November, 2007 by the affiant who is personally known to me.

*Kristi Malan*

